92-1595

No.

Supreme Court, U.S.
FILED
APR 01 1993
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1992

GEORGE LEINWOOD BRITTON,

Petitioner,

vs.

KATRINA PERNNELL MURRAY by NEVADA STATE WELFARE DIVISION, Guardian Ad Litem, and SHIRLEY ANN MEEKS,

Respondents.

Petition For Writ Of Certiorari To The Nevada Supreme Court

PETITION FOR WRIT OF CERTIORARI

POTTER LAW OFFICES
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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Nevada statute for giving notice to an alleged obligor of child support prior to implementing a stayed wage withholding violates state and federal due process rights and consequently is repugnant to the United States Constitution because adequate notice is not provided to the alleged obligor.

2. Whether a retrospective hearing following wage withholding is repugnant to the United States Constitution because the retrospective hearing violates state and federal due process rights of an alleged obligor.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of this case in this Court contains the names of all parties to the proceedings in the Nevada Supreme Court.

GEORGE L. BRITTON, Petitioner herein, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Nevada Supreme Court entered in the above-entitled case on December 3, 1992.

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OPINIONS BELOW

The December 3, 1992 opinion of the Nevada Supreme Court, whose judgment is herein sought to be reviewed, Case No. 23198, which is unpublished, and is reprinted in the separate Appendix to this Petition, pp. A-2. The Order of the Nevada Supreme Court Denying Rehearing which is also unpublished is reprinted in the Appendix, pp. A-1. The prior opinions of the Eighth Judicial District Court for the State of Nevada also reprinted in the Appendix are not reported and are reprinted in the Appendix as follows: Order Denying Objection to Referee's Report, Case No. D77998, decided March 23, 1992, pp. A-4; Referee's Report and Recommendations, Case No. D77998, entered February 11, 1992, pp. A-6; Referee's Minute Order, decided December 31, 1991, pp. A-9; and Paternity Master's Order, decided April 21, 1986, pp. A-11.

STATEMENT OF JURISDICTION

The Judgment of the Nevada Supreme Court was entered on December 3, 1992. The Petitioner's request for rehearing was denied by Order signed February 1, 1993. The jurisdiction of this Court is invoked pursuant to 28 USC § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case further involves 42 USC § 666(b)(4)(A) which provides as follows:

> Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

Furthermore, this case involves 45 C.F.R. 303.3(b)(1) which provides as follows:

> (b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV-D agency must:
>
> (1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the absent parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records.

This case further involves NRS 31A.040 which provides as follows:

> 1. The enforcing authority shall notify a responsible parent who is subject to the withholding of income by certified mail to his last known address, return receipt requested:
>
> (a) That his income is to be withheld;

(b) Of the amount of any arrearages;

(c) Of the amount to be withheld from his wages or commissions to pay current support and the amount to be withheld to pay any arrearages;

(d) That the notice of withholding applies to any current or subsequent employer;

(e) That a notice to withhold from his wages and commissions will be mailed to his employer 15 days after the date of mailing to him of the notice of withholding, unless he contests it;

(f) That he may contest the withholding; and

(g) Of the grounds and procedures for contesting it.

2. The provisions of this section are applicable only to a responsible parent against whom there is entered an order of a kind described in subsection 2 of NRS 31A.025.

Furthermore, the case involves NRS 125B.170 which provides as follows:

1. The enforcing authority shall release information concerning a responsible parent's failure to pay support for a child to an agency of the kind defined in 15 U.S.C. § 1681a(f) at its request, except that:

(a) If the amount of the delinquent payment is less than $1,000, the release of the information is at the discretion of the enforcing authority; and

(b) The information may be given to the agency only after notice of the proposed disclosure has been sent to the responsible parent and he has had 20 days to correct the information.

2. The enforcing authority shall collect from the requesting agency a fee not to exceed the actual cost of providing the information.

3. The welfare division shall adopt regulations prescribing the content of the notice of the proposed disclosure and establishing procedures for the responsible parent to correct any of the information to be disclosed.

This case further involves NRS 130.180(2) which provides:

2. If the attorney general does not know the location of the obligor or his property in the state and no state location service is available he shall use all means at his disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

STATEMENT OF THE CASE

This case involves the type of notice given to an alleged obligor before the institution of wage withholding. Wage withholding, in this case, was instituted before the child support arrears were established. This, in essence, constitutes a pre-judgment garnishment without notice when the governing law requires notice prior to the garnishment.

The child for whom support is sought, Katrina Pernnell Murray, also known as Penny, was born December 22, 1972. Approximately fourteen years later, the mother, Shirley Ann Meeks, sought a determination of paternity and the attendant child support. This determination used the services of the Clark County District Attorney's Office pursuant to the Revised Uniform Enforcement of Support Act codified in Nevada as NRS 130.010 *et seq*. The putative father, George Lenwood Britton, requested a determination of paternity through blood testing. The blood testing showed George Lenwood Britton to be the father. On April 10, 1986, the court established a current support obligation, a right of visitation, and stayed wage withholding. After several months, the parties may or may not have agreed to forego child support and visitation. No child support payments were processed by the Clark County District Attorney after October 1986.

In 1991, the child emancipated. Shortly thereafter, Shirley Ann Meeks again sought the assistance of the Child Support Division of the Clark County District Attorney to collect child support she alleged to be unpaid. The Nevada statute, NRS 31A.040, requires a letter to be sent to the obligor by certified mail, return

receipt requested, informing the obligor of the potential wage withholding. It is disputed whether this letter was ever sent. Mr. Britton reviewed the court file in this matter after September 6, 1991, the date his wages began to be withheld. His review of the file led him to believe the letter had been mailed to an address that was current in 1986, but was no longer current. In oral argument before the Nevada Supreme Court, the Deputy District Attorney stated he did not believe the letter had been sent at all. A motion to determine whether or not the wage withholding was proper was filed on October 2, 1991. A hearing was held before Domestic Referee Terrance C. Marren on October 30, 1991. The matter was taken under advisement and a minute order issued on December 31, 1991. The district attorney prepared a Referee's Report and Recommendations which contained an expansive interpretation of the minute order. An objection to that Report was timely filed on February 21, 1992. Eighth Judicial District Court Judge Joseph Pavlikowski heard the objection and refused to overrule the Domestic Referee. A notice of appeal to the Nevada Supreme Court was timely filed on April 14, 1992. Oral argument was heard on October 16, 1992. An opinion issued on December 3, 1992.

If a letter is sent pursuant to NRS 31A.040, it does not comply with the requirements for due process under the Fourteenth Amendment to the United States Constitution in that it does not provide notice in a manner reasonably calculated to be received pursuant to *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 71 S.Ct. 652 (1950). The manner of giving notice is not reasonably calculated to be received because the enforcing agency simply mails

to the last known address. However, prior to instituting a wage withholding, the enforcing agency conducts an investigation to determine the alleged obligor's employer. In the course of that investigation or through steps readily incorporated into that investigation, such as review of telephone directories, police records, state and federal tax records and motor vehicle license offices, *see*, NRS 130.180(2), *see also*, 45 C.F.R. 303.3(b)(1), the enforcing agency would uncover an address which can be better considered a "last known address". If the letter is not actually sent, then the alleged obligor has no opportunity to receive any notice prior to the wage withholding. Federal statute regarding collection of child support requires notice before the wage withholding is initiated. 42 USC § 666(b)(4)(A).

Because arrears were not established or reduced to judgment, any wage withholding is tantamount to a pre-judgment garnishment requiring not only notice, but a hearing prior to the wage withholding. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820 (1969). In this case, wage withholding proceeded for almost eight weeks before a retrospective hearing was held. Actual wage withholding did not end until April 14, 1992, when a supersedeas bond was filed. *Sniadach* alone shows that a retrospective hearing does not satisfy an alleged obligor's due process rights. A retrospective hearing does not refund monies taken from an alleged obligor by wage withholding when that alleged obligor proves his or her defenses and the monies are already distributed to an obligee who is not a state or political subdivision. *See*, NRS 130.042.

The status of the URESA Division of the Clark County District Attorney's office in this case enhances the need for adequate due process. In this case, the URESA Division of the Clark County District Attorney's office stands in the shoes of a private attorney or collection agency with enhanced powers. It can report the alleged arrears to a credit reporting agency which can cause damage to an alleged obligor's " . . . good name, reputation, honor, or integrity . . . " *Wisconsin v. Constantineau*, 408 U.S. 433, 91 S.Ct. 507 (1971). The potential for governmental impropriety invokes a procedural due process right to a hearing before the offensive action is taken. *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972), J. Marshall, dissenting. These cases point up the need for a hearing before the wage withholding is instituted. A retrospective hearing cannot erase the damage to an alleged obligor's standing in his community.

RULINGS BELOW

At the time of this case, Nevada employed special masters known as Domestic Referees who heard most contested domestic matters. Although presented, the Domestic Referee made no findings as to the due process questions. The District Court Judge upheld the Domestic Referee's decision without a separate opinion. The Nevada Supreme Court reviewed the due process issues and determined that Mr. Britton had had a retrospective hearing which satisfied the due process requirements.

REASONS FOR GRANTING WRIT

The first issue in this case is the sufficiency of notice to an alleged obligor prior to lifting the stay on a stayed wage withholding and instituting that wage withholding. This appears to be a question of first impression before this Court.

The second issue is whether a retrospective hearing can satisfy due process where the state and federal statutes and the federal case law mandates a hearing before wage withholding begins. The issue of retrospective hearing in a URESA setting also appears to be a question of first impression before the Court.

Certiorari should be granted because the state law is repugnant to the United States Constitution.

This case concerns the Fourteenth Amendment due process rights of an alleged child support obligor as defined in the Revised Uniform Enforcement of Support Act with respect to wage withholdings. Nevada statute presently provides that an alleged obligor should be given notice at his last known address of an impending wage withholding by certified mail, return receipt requested. Upon receipt of this notice an alleged obligor may request a hearing. However, it is all too likely that the notice will be mailed to an out-dated address and not received by the alleged obligor. An alleged obligor who has moved from that address may not receive notice of the impending wage withholding, despite statutory authorization to take steps to locate the alleged obligor. The notice provided for by Nevada statute is not reasonably calculated to inform pursuant to the standard established in *Mullane v. Central Hanover Bank*, 339 U.S. 306, 71

S.Ct. 652 (1950), of notice calculated to be received. Consequently, the state statute is repugnant to the United States Constitution.

The federal statute enabling a state to enforce a support obligation requires a state to adhere to procedural due process requirements of the state. 42 USC § 666(b)(4)(A). It is axiomatic that federal due process standards must be upheld.

In its Order of Remand, the Nevada Supreme Court found that because a retrospective hearing had been held, due process was satisfied. This Court has previously held that there are certain circumstances in which a hearing must be held before property or wages may be attached. In *Sniadach, supra,* this Court relied on *Mullane v. Central Hanover Bank, supra,* stating,

> . . . the right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." 399 U.S. at 314, 70 S.Ct. at 657.

395 U.S. at 339-40, 89 S.Ct. at 1822. It is clear that under the present statute, the odds of receiving notice are potentially so slim as to vitiate the opportunity to choose. A retrospective hearing does nothing to revive that opportunity to choose because the choice is already made, perhaps irrevocably, locking an alleged obligor into a wage withholding without allowing the alleged obligor the opportunity to present a defense to the alleged obligation.

The sudden shock of a paycheck reduced by a wage withholding is a strong impetus to seek a hearing, but the reduced income limits an alleged obligor's ability to seek

a hearing. It eliminates the alleged obligor's ability to present a defense. Again, the ability to choose is diminished.

The procedural due process violations outlined are not unique to Mr. Britton. Any obligor residing in Nevada who has been inducted into the URESA system who is subject to a stayed wage withholding may suddenly feel the sting of these due process violations. A payment that is mailed by the obligor but not received by the District Attorney's office can trigger the wage withholding process even though the obligor has not defaulted in his obligation. Suddenly, he pays his monthly installment twice in one month – once when he mails his payment and once when his wages are withheld. He learns he has paid twice when he receives his shrunken paycheck. The obligor cannot afford to meet his other obligations much less hire an attorney to request a retrospective hearing. The alleged obligor has lost the choice of presenting the defense of payment.

The Nevada statute so vitiates an alleged obligor's procedural due process rights so as to render them nonexistent. We urge this Court to find the Nevada statute repugnant to the United States Constitution because requisite notice prior to a hearing is not provided and because a retrospective hearing does not cure the harm done by failing to provide advance notice of the impending wage withholding.

CONCLUSION

Wherefore, Petitioner respectfully prays that a Writ of Certiorari issue from this Honorable Court to review the judgment of the Supreme Court of Nevada in *Britton v. Nevada State Welfare Division*. In the event that the Petition is granted, Petitioner prays that the Order Denying Rehearing of the Court below be reversed, that the cause be remanded for proceedings consistent with this Court's decision.

Respectfully submitted,

Potter Law Offices

BY: /s/ Cal J. Potter, III

CAL J. POTTER, III
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorney for Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE LENWOOD BRITTON, Appellant,	)	No. 23198
vs.	)	
KATRINA PENNELL MURRAY BY NEVADA STATE WELFARE DIVISION, GUARDIAN AD LITEM, Respondent.	)	

ORDER DENYING REHEARING

(Filed Feb 01 1993)

Rehearing denied, NRAP 40(c)

It is so ORDERED.[1]

/s/ Rose, C.J.
Rose

/s/ Steffen, J.
Steffen

/s/ Young, J.
Young

/s/ Springer, J.
Springer

---

[1] The Honorable Miriam Shearing, Justice, did not participate in the decision of this appeal.

cc: Hon. Joseph S. Pavlikowski, Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Rex Bell, District Attorney
Potter Law Offices
Loretta Bowman, Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE LENWOOD BRITTON	)	No. 23198
Appellant,	)	
vs.	)	
KATRINA PERNNELL MURRAY BY NEVADA STATE WELFARE DIVISION, GUARDIAN AD LITEM,	)	
Respondents.	)	

ORDER OF REMAND

(Filed DEC 03 1992)

This is an appeal from an order of the district court approving the report of a domestic relations referee regarding child support.

A brief affiliation between George Lenwood Britton (Britton) and Shirley Ann Meeks resulted in the birth of a daughter. At a paternity hearing fourteen years later, it was determined that Britton was the child's natural father and he was ordered to pay child support. Child support payments were initially received, but ceased a short time later. Thereafter, the URESA division of the district court initiated wage withholdings from Britton's employer. A hearing was held before a domestic relations referee where a determination was made in favor of the State. Britton appealed to the district court, which in turn approved the referee's report.

In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), the court stated that "[t]he fundamental requisite of due process of law is the opportunity

to be heard." In this instance, a hearing was held wherein Britton was permitted to voice his objections and present his contentions. The Senior Domestic Relations Referee determined that Britton should pay the arrearages as directed by the URESA court.

Pursuant to NRCP 53(e)(2), in non-jury actions a court shall accept the master's findings of fact unless clearly erroneous.[1] Furthermore, a district court's determinations of fact will not be set aside unless they are clearly erroneous. Hermann Trust v. Varco-Pruden Buildings, 106 Nev. 564, 566, 796 P.2d 590, 592 (1990). Here, the referee considered evidence and testimony from all parties and made a determination based upon conflicting versions of the disputed events. Thereafter, the district court issued an order approving the referee's report. The findings of fact below are not clearly erroneous.

After hearing oral argument and reviewing both the record on appeal and the parties' briefs, we conclude that appellant's claims are without merit.

Accordingly, we hereby remand this action to the district court for further proceedings with regard to the amount of arrearages owed by Mr. Britton.

---

[1] The terms "master" encompasses a referee. NRCP 53(a).

It is so ORDERED.

/s/ Mowbray, C.J.
Mowbray

/s/ Springer, J.
Springer

/s/ Rose, J.
Rose

/s/ Steffen, J.
Steffen

/s/ Young, J.
Young

cc: Hon. Joseph S. Pavlikowski, Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Rex Bell, District Attorney
Potter Law Offices and Beverly Salhanick
Loretta Bowman, Clerk

CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
POTTER LAW OFFICES
1125 Shadow Lane
Las Vegas, Nevada 89102
(702) 385-1954

DISTRICT COURT

CLARK COUNTY, NEVADA

KATRINA PERNNELL MURRAY by NEVADA STATE WELFARE DIVISION, Guardian Ad Litem	)	CASE NO. D 77998 DEPT. NO. III - DRR1 DOCKET NO. "E"
Plaintiffs,	)	
vs.	)	
GEORGE LENWOOD BRITTON and SHIRLEY ANN MEEKS,	)	
Defendants.	)	

Date of Hearing: March 18, 1992
Time of Hearing: 9:00 a.m.

ORDER ON OBJECTION

(Filed MAR 23 '92)

This matter having come on for hearing on the 18th day of March, 1992, on Defendant George L. Britton's Objection to Referee's Report, Defendant George L. Britton personally appearing and appearing by and through his counsel, Cal J. Potter, III, Esq. of Potter Law Offices, John B. Squires, Deputy District Attorney appearing on

behalf of Katrina Pernnell Murray by Nevada State Welfare Division, Guardian Ad Litem and Defendant Shirley Ann Meeks not appearing, the Court having heard argument of counsel, and good cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the recommendations of Terrance Marren, Senior Domestic Relations Referee in the Referee's Report on the hearing of October 31, 1991, are hereby affirmed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the issue of the amount of arrearages owing be remanded to Terrance Marren, Senior Domestic Relations Referee for determination.

DATED this 23 day of March, 1992.

/s/ Joseph S. Pavlikowski
DISTRICT JUDGE

SUBMITTED BY:

POTTER LAW OFFICES

BY: /s/ Cal J. Potter, III
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorney for Defendant
BRITTON

RECEIVED
FEB 11 1992
Ans'd. . . .

CASE NO. D-77998
DEPT. NO. DR I

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

KATRINA PERNELL MURRAY by NEVADA STATE WELFARE DIVISION GUARDIAN ad Litem
Plaintiff,

-vs-

GEORGE LENWOOD BRITTON and SHIRLEY ANN MEEKS,
Defendant.

REFEREE'S REPORT

Hearing Date: 10/30/91

Time: 10:00 A.M.

APPEARANCES

Submitted by Rex Bell,
District Attorney by

X ~~Plaintiff~~ Defendant's Mother
X Defendant
X ~~Plaintiff's~~ Counsel: John B. Squires, Deputy ~~District Attorney~~

_ Defendant's Counsel: ~~Beverly Salhaniek~~,

Plaintiff's	Defendant's	NATURE OF PROCEEDING
—	—	Temporary Fees and Allowances
—	—	Temporary Custody and Visitation
—	—	Change of Custody or Visitation
—	—	Custody Pursuant to Chapter 125A of NRS
—	—	Increase/Decrease/ Arrearages Child Support
—	—	Exclusive Possession of Community Residence
—	—	Motion to Withdraw as Counsel
—	—	Order to Show Cause
—	XX	Other: Defendant George Lenwood Britton's Motion R: Judgment on Child Support Arrears

NOTICE TO NON-MOVING PARTY

— Personal Service On: _____ Date: ____
— Mailed To: _____ Date: ____
— Receipt of Copy By: _____ Date: ____
— Other: _____ Date: ____

PROPER PERSON'S ADDRESS: Shirley Meeks
1951 N. Jones #103
LassVegas, NV 89108

FINDINGS

ISSUES RELATED TO MINOR CHILDREN

1. CUSTODY/VISITATION

_ The parties should be awarded joint legal custody of their minor child(ren).

_ Plaintiff/Defendant should be awarded primary physical custody of the child(ren). Plaintiff/Defendant should have the following specific custody of the minor child(ren) of the parties.

_____

_____

_____

_ Custody of the minor child(ren) of the parties should be awarded to Plaintiff/Defendant with reasonable visitation to the non-custodial parent.

_ Custody of the minor child(ren) of the parties should be awarded to Plaintiff/Defendant with the following specific visitation to the non-custodial parent:

_____

_____

_____

_ Additional specific Findings regarding custody and visitation:

_____

_____

_____

2. CURRENT CHILD SUPPORT

_ Based on his/her income and assets, the Plaintiff/Defendant should pay a sum of $___ per month per child as child support for the ___ minor child(ren) of the parties. The first payment should be due on ___ in an amount of $___ and thereafter

on the ___ of each succeeding month in the amount of $___.

_ Additional specific Findings regarding custody and visitation:

_____

_____

_____

3. CHILD SUPPORT ARREARAGES

_ Plaintiff/Defendant is in arrears in child support payments in an amount of $___ from ___ through ___; said arrearages should be reduced to judgment in favor of Plaintiff/Defendant.

_ The judgment for arrearages should be immediately subject to execution by all legal means.

_ Execution on the judgment for child support arrearages should be stayed so long as the following conditions are met by the obligor:

The obligor shall pay a minimum of $_____ on arrearages per month beginning on _____. The remaining balance due and owing should be immediately subject to execution by the obligee if the obligor is more than _____ days late in any payment on arrears.

X Other: That there was no agreement between the parties to waive child support payments. It is further found that the Defendant Katrina Perneel Murray has been diligent in pursuing her support herein and there are no laches or other equitable defenses to support obligation herein that would require the court to dismiss arrearages or require payments made by wage withholding to be repaid or stayed.

RECOMMENDATIONS

Based on the foregoing Findings, the Referee makes the following Recommendations:

_ The relief prayed for by Plaintiff/Defendant should be granted.

X The relief prayed for by Plaintiff/Defendant should be denied.

_ The relief prayed for by Plaintiff/Defendant should be granted in part as follows: _____

_____

_____

_ Time is of the essence in this case in that: _____

_____

_____

accordingly, the District Judge should enter the Order ratifying the Referee's Report forthwith subject to Plaintiff/Defendant's right to object.

DATED this ___ day of 2-11, 1992.

/s/ Terrance P. Marren
DOMESTIC RELATIONS
REFEREE

Submitted By: Rex Bell, District Attorney by John B. Squires, Deputy District Attorney

/s/ John B. Squires

NOTICE

Pursuant to NRS 125.005(4), you are hereby notified you have only 10 days from the date you are personally served with this document within which to file written objections thereto. You have 13 days from the date this document is placed in counsel's folder or is mailed if

those methods of service are utilized. EDCR 5.84(a). Your signature below acknowledges your receipt of the same.

_ The parties have waived objection to the Referee's Report.

Plaintiff/Attorney for Plaintiff	Defendant/Attorney for Defendant
Dated: _____	Dated: _____

CLERK'S CERTIFICATE

A copy of the foregoing Referee's Report was:

_ Mailed to Plaintiff/Defendant in Proper Person on the ___ day of ___, 19___.

✔ Placed in the folder of the Plaintiff's/Defendant's counsel in the Clerk's Office on the ___ day of 2-11-92, 19___.

_ OBJECTION TO REFEREE'S REPORT
Filed: _____
HEARING DATE: ___
DEPT. ___

LORETTA BOWMAN, Clerk

By: /s/ Linda Titsworth
Deputy Clerk

ORDER

The Court, having reviewed the above and foregoing Referee's Report prepared by the Domestic Referee and,

_ The parties having waived the right to object thereto.

_ No timely objection having been filed thereto.

_ Time being of the essence and the appeal period reserved to the parties.

The Court, having received the objection thereto and any other papers, testimony and argument related thereto, and good cause appearing,

IT IS HEREBY ORDERED that the Referee's Report and its Findings and Recommendations are affirmed and adopted.

DATED AND DONE this ___ day of ___, 19___.

_____

DISTRICT JUDGE

CASE NO. D077998
TITLE NEVADA STATE WELFARE DIVISION VS. GEORGE L. BRITTON

DATE REFEREE	REFEREE'S NOTE
12-31-91 TERRANCE P. MARREN, Senior Domestic Relations Referee D. Grimm, Secy.	This case was taken under submission on October 30, 1991 upon the father's request to vacate certain child support arrearages entered in the URESA court. The father contends that the parties struck an agreement in 1986 whereby she would vacate his child support obligation if he would pay 75% of unreimbursed medical expenses. Unlike *Parkinson v. Parkinson*, 106 Nev. Adv. Op. No. 91 (August 21, 1990), there was no witness to this alleged bargain. That, and the fact that the mother attempted to enforce her rights of support by a letter to Loretta Bowman in 1988, convinced the Referee that this bargain cannot be proved. Given the case of *Scott v. Scott*, 1991 Nev. Adv. Op. No. 130 (December 6, 1991), even if such an agreement had been reached it would likely have been invalid.

Accordingly, the Referee recommends that the father's motion to reduce or eliminate child support arrearages should be denied. The father should be required to pay the arrearages as directed by the URESA court.

A copy of this Referee's Note is to be placed in the folders of counsel for the parties. A copy will also be sent to the mother in Proper Person for her information and use. Deputy District Attorney John B. Squires is directed to prepare the Referee's Report relative to these matters within five (5) judicial days of receipt of this Referee's Note as required by EDCR 5.83.

PAGE: 001 MINUTES DATE: 10/30/91

DOMESTIC COURT MINUTES

85-D-077998-P Nevada State Welfare Division vs. Britton, George L.

10/30/91
10:00 AM 00
MOTION FOR JUDGMENT ON CHILD SUPPORT ARREARAGES

HEARD BY:
TERRANCE P MARREN, Domestic Referee; Dept. DR1

OFFICERS:
LINDA TITSWORTH, Court Clerk
BARBARA SHAVALIER, Reporter/Recorder

REQ. BY:
Britton George L, Defendant

PARTIES:
001 P1 Nevada State Welfare Division
001591 Squires, John B.

002 D1 Britton, George L
002786 Salhanick, Beverly J.

003 D Meeks, Shirley A
001591 Squires, John B.

Ms. Salhanick filed affidavit on behalf of Deft. in open Court with no objection by Mr. Squires. Arguments and statements by the parties. REFEREE RECOMMENDED, matter under submission as to child support. The Referee directed that the original note referred to today be provided by Respondent Mother with a copy to counsel and when note is received matter will be under submission.

CASE NO. D-77998
DEPT. NO. PATERNITY
DOCKET Q

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * *

KATRINA PERNNELL MURRAY by NEVADA STATE WELFARE DIVISION, Guardian Ad Litem, ~~and NEVADA STATE WELFARE DIVISION~~

Plaintiffs,

-vs-

GEORGE LENWOOD BRITTON
and
SHIRLEY ANN MEEKS

Defendants.

JUDGMENT AND ORDER APPROVING THE FINAL RECOMMENDATIONS OF THE MASTER

(Filed Apr 25 '86)

Informal hearing(s) having been held pursuant to the Uniform Parentage Act, Special Master, LYNN R. SHOEN presiding, and the Hearing Master having filed his Final Recommendations, and each party having received a copy thereof, and no rejection having been timely filed pursuant to EDCR 1.42(c);

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Final Recommendations of the Master filed herein on are approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant GEORGE LENWOOD BRITTON is the natural father of the minor Plaintiff KATRINA PERNNELL MURRAY born out of wedlock to the Defendant SHIRLEY ANN MEEKS on December 22, 1972.

. . .

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant SHIRLEY ANN MEEKS is a fit and proper person to have care, custody and control of the minor Plaintiff KATRINA PERNNELL MURRAY and reasonable visitation rights are granted Defendant GEORGE LENWOOD BRITTON exercise of which is subject to reasonable notice to the custodial parent. Defendant GEORGE LENWOOD BRITTON can visit with the minor Plaintiff KATRINA PERNNELL MURRAY every other week and one evening visit during the week and four (4) weeks during the summer. Defendant GEORGE LENWOOD BRITTON can leave the state with the minor Plaintiff KATRINA PERNNELL MURRAY for one (1) week.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant GEORGE LENWOOD BRITTON shall provide medical insurance coverage for the minor Plaintiff KATRINA PERNNELL MURRAY when available through his employer until the child reaches the age of majority, otherwise emancipates or until further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant GEORGE LENWOOD BRITTON pay current child support for the minor Plaintiff KATRINA PERNNELL MURRAY in the amount of $125.00 per month beginning the 20th day of April, 1986 and continuing the 20th day of every month thereafter until the child reaches the age of majority, otherwise emancipates or until further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all support payments are to be paid by CASHIER'S CHECK or MONEY ORDER only, made payable to LORETTA BOWMAN, Clark County Clerk and mailed or delivered to 200 South Third Street, Las Vegas, Nevada 89155 and have Case Number D-77998 on the face of each payment. The Clerk shall forward each payment to SHIRLEY ANN MEEKS at 509 Kasper Avenue, Las Vegas, Nevada 89106.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs of blood drawing, shipping and testing in the amount of $150.00 shall be taxed to Defendant GEORGE LENWOOD BRITTON. Payment on said costs shall be $25.00 per month beginning the 20th day of April, 1986 and continue each month until paid. Costs are to be paid to CLARK COUNTY DISTRICT ATTORNEY, FAMILY SUPPORT DIVISION, by CASHIER'S CHECK or MONEY ORDER and mailed or delivered to Family Support Division of the District Attorney's Office, 310 South Third Street, Las Vegas, Nevada 89101, Attn: Business Manager.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant GEORGE LENWOOD

BRITTON wages be garnished by Wage Withholding as is set forth by law. Said Wage Withholding stayed so long as payments remain current.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court retains jurisdiction over the parties hereto and the subject matter herein to make such other and further Orders as may be deemed necessary.

DATED this 21st day of April, 1986.

ROBERT J. MILLER
DISTRICT ATTORNEY
BY /s/ John B. Squires
JOHN B. SQUIRES
Deputy District
Attorney

/s/ Miriam Shearing
DISTRICT JUDGE

GEORGE LENWOOD
BRITTON
1940 Harvard
N. Las Vegas, NV 89030

SHIRLEY ANN MEEKS
509 Kasper Ave.
Las Vegas, NV 89106

Supreme Court, U.S.
FILED
APR 15 1993
OFFICE OF THE CLERK

No. 92-1595

In The

Supreme Court of the United States

October Term, 1992

GEORGE LENWOOD BRITTON,

Petitioner,

vs.

KATRINA PERNNELL MURRAY by NEVADA STATE WELFARE DIVISION, Guardian Ad Litem, and SHIRLEY ANN MEEKS,

Respondents.

On Petition For Writ Of Certiorari To The Nevada Supreme Court

BRIEF IN OPPOSITION

Clark County District Attorney
REX BELL by
Chief Deputy District Attorney
ROBERTA J. O'NEALE
Counsel for Respondents
Nevada State Welfare Division
301 East Clark Avenue
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Las Vegas, NV 89101
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COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

It has been conceded at every stage of the proceedings in this matter that the notice provisions of NRS 31A.040 cited in the Petition for Writ of Certiorari, filed herein, were not followed. This concession was made before the Hearing Master who heard the evidence in this case, before the District Court Judge that reviewed the Master's Findings, and before the Supreme Court of the State of Nevada who reviewed the action of the District Court.

We, again, concede that the procedures required by our wage withholding laws, NRS 31A.040 were initially ignored.

In April of 1986, when the original Paternity Judgment was entered in this case, it was local practice for courts to order what was referred to as "Stayed Wage Withholding". This was done in this instance. Stayed wage withholding avoids routine requests by the District Attorney's Office for immediate withholding in all cases to enforce support orders, and gives Defendants an opportunity to pay on their own, thereby saving court time in litigating requests. A stayed wage withholding order meant that so long as payments of support were made as ordered (i.e. through the County Clerk's Office), the District Attorney's Office would not send the wage withholding to the Defendant's employer. The practice was to simply rely upon the payment records as reported through the County Clerk's Office. Since the Family Support Act of 1988, P.L. 100-485 Sec. 101 now requires "immediate" income withholding in all cases when an

Order of Support has been made, the practice as conceded above has been abandoned.

The Defendant was given hearings on his theory that no support was due as he claimed it has been waived. Our courts have determined that there was no waiver and that the Defendant's failure to pay support was not proper. Even though this occurred after the fact, our courts felt that a second hearing to determine whether thirty (30) days of support had not been paid would be futile and duplicative, and, therefore, have not found it necessary to stay the withholding as requested by the Defendant.

CONCLUSION

Wherefore Respondent respectfully prays that the Petition for Writ of Certiorari be denied.

DATED this 14 day of April, 1993.

Respectfully submitted,

REX BELL
District Attorney
Nevada Bar #001799

ROBERTA J. O'NEALE
Chief Deputy District
Attorney
Counsel for Respondent